

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

**TRAVELERS CASUALTY AND SURETY  
COMPANY OF AMERICA,**

2:12-cv-0058-LDG-NJK

Plaintiff,

## ORDER and ORDER TO SHOW CAUSE

V.

WILLIAMS BROTHER, INC., et al.,

### Defendants.

The court hereby addresses the following matters:

I. Travelers' motion for summary judgment (#289, response #302, reply #306) and Defendant Peek Construction Company's motion to strike travelers' motion for summary judgment (#295, response #300, reply #306)

Peek Construction Company (“Peek”) contends in its motion to strike Traveler’s motion for summary judgment that Travelers filed the motion after the dispositive motion deadline 30 days following the discovery cutoff. The discovery deadline set by Magistrate Judge Johnston was, at the latest, February 28, 2013, making the dispositive motion deadline March 30, 2013, under Local Rule 26-1(e)(4). Travelers filed its motion for summary judgment on September 24, 2013.

1       Travelers argues that on March 30, 2013, Peek was effectively out of the case. It was not  
2 represented by counsel; it had failed to respond to Travelers' discovery requests or to meet and  
3 confer on discovery; it had failed to appear for a scheduled deposition; it had failed to appear for a  
4 hearing before the court; and it had failed to obey several court orders. Still, all of these  
5 circumstances would not have dissolved the dispositive motion deadline, and no party moved to  
6 continue or clarify the deadline. The court will grant Peek's motion to strike Travelers' motion for  
7 summary judgment.

8       Nonetheless, it appears that Peek failed to respond to the written discovery propounded by  
9 Travelers by the deadline of February 25, 2013. That is also the day on which the court granted  
10 Peek's counsel's motion to withdraw. The grant of counsel's motion to withdraw, therefore, did  
11 not affect Peek's failed obligation to respond to the written discovery. In this instance, the court is  
12 inclined to exclude from trial any evidence that would have been responsive to the written  
13 discovery requests. However, this issue should be raised in a motion in limine; such a motion may  
14 be filed at any time.

15 II.      Travelers' Motion for Orders to Show Cause (#406)

16       Also before the court is Traveler's motion for an order to show cause, filed on June 4,  
17 2014, (1) why corporate defendants Peek Construction Company ("Peek"), ECCL Holdings, LLC,  
18 and BLC Nevada Trust dated April 20, 2006 (the "corporate defendants"), should not have a  
19 default judgment entered against them dismissing the counterclaim pending by Peek against  
20 Travelers, and granting judgment in favor of Travelers on its indemnity complaint, and (2) why  
21 defendants Michael and Brenda Peek, and CP Enterprises, should not be held in contempt for their  
22 failure to obey the court's order to provide supplemental budgets and accountings for January-  
23 April and the failure to provide a budget for May.

24       On April 10, 2014, rather than defaulting the corporate defendants for failure to appear in  
25 this action represented by counsel, the court provided that:

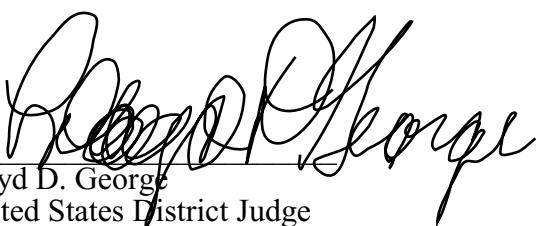
1       The court is willing to allow the defendant and non-party corporations to proceed without  
2       legal representation under the following conditions: (1) all principals, owners, officers, or  
3       those authorized to act on behalf of the subject corporation, including the Peeks, agree in  
4       writing filed with the court that Michael Peek may represent its interests, and (2) that all  
5       principals, owners, officers, or those authorized to act on behalf of the subject corporation  
6       are present in court during scheduled proceedings. If these conditions cannot be met, the  
7       court will proceed without representation of the subject corporations, and consider possible  
8       default or sanctions.

9                  As of this date, no authorizations have been filed with the court. The court will grant the  
10          motion for an order to show cause. Good cause appearing, the court will also grant the motion for  
11          an order to show cause why the Peeks should not be held in contempt for their failure to obey the  
12          court's order to provide supplemental budgets and accountings for January-April.

13                  THE COURT HEREBY ORDERS that defendant Peek Construction Company's motion to  
14          strike travelers' motion for summary judgment (#295) is GRANTED.

15                  THE COURT FURTHER ORDERS that Travelers' motion for orders to show cause  
16          (#406) is GRANTED.

17                  Dated this 12 day of September, 2014.

18                    
19                  Lloyd D. George  
20                  United States District Judge